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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,245	08/05/2003	Hai H. Trieu	4002-3361/PC399.06	6393
30565	7590	05/25/2006		
WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP 111 MONUMENT CIRCLE, SUITE 3700 INDIANAPOLIS, IN 46204-5137			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/634,245		TRIEU ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Pedro Philogene		3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7,9,10,13,14,34-44,46-57 and 2429 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7,9,14,24,28,29,34,37-41,46-55 and 1013 is/are rejected.
- 7) ☒ Claim(s) 25-27,35,36,42-44,56,57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7,9,10,13,14,24,28,29,34,37-41,46-55 are rejected under 35

U.S.C. 102(e) as being anticipated by Bonutti et al. (6,203,565).

With respect to claims 24,40, 51,53, Bonutti et al disclose an implant assembly comprising a bone plate (10,18,168) having at least one opening therethrough a fastener (14,20,162) formed of a non metallic material received within the opening and having a proximal head, a distal bone engaging portion, and a shaft there between, wherein at least one of the fastener and the bone plate include an adhesive (16,22 170) to fixedly inter-engage the fastener to the plate, as set forth in column 3, lines 40-67, column 4, lines 40-67, column 5, lines 1-12, and as best seen in FIGS.1-2. the fastener is bonded to the bone plate and solvent bonded to the bone plate (since the adhesive or bondable material softens and bonds to the components). Also, as set forth in column 5, lines 29,30, Bonutti et al disclose the words “adhere and bond” interchangeably which means one can either adhere or bond two components together.

With respect to claims 7,9,10,13,14,28,29,41,46-50, 52,54,55 Bonutti et al discloses all the limitations, as set forth in column 3, lines 40-67, column 4, lines 40-67, column 5, lines 1-12, and as best seen in FIGS.1-2.

With respect to claims 34,37,38,39, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

***Allowable Subject Matter***

Claims 25-27, 35,36,42-44,56,57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

Applicant's arguments filed 2/27/06 have been fully considered but they are not persuasive. In general, applicant is arguing the fact that Bonutti et al did not teach of an "adhesive". However, Bonutti et al disclose that a bondable material is used to either "adhere or bond" two components together. For that, applicant's attention is directed to column 5, lines 29-30. Furthermore, in column 6, lines 19-27, Bonutti et al disclose that "the third component is non-flowable or non-adherent at room temperature before use. When it is softened by heating and applied to the first and second components, it bonds to both components to interconnect them". So, broadly speaking, Bonutti et al teaches of an adhesive, as claimed by applicant. Whether, Bonutti et al use the application of heat to soften the bondable material and turn it into a soft material (adhesive) to interconnect the two components is irrelevant. Applicant broadly claimed an "adhesive"

applied to the components which is met by the "bonding material" of Bonutti et al, since Bonutti et al use the word "bond" or "adhere" to connect the two components.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
May 22, 2006



PEDRO PHILOGENE  
PRIMARY EXAMINER